

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Sunnyvale Housing Division  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
Attn: Housing Officer

**No fee for recording pursuant to  
Government Code Section 27383**

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APN: 110-29-028

**PERMANENT LOAN AGREEMENT  
CITY OF SUNNYVALE HOUSING MITIGATION FUND  
EDWINA BENNER PLAZA**

This Loan Agreement (the "Agreement") is made as of March \_\_\_\_, 2017 by and between the **City of Sunnyvale**, a municipal corporation (the "Lender"), and **MP Edwina Benner Associates L.P.**, a California limited partnership (the "Borrower").

**RECITALS**

A. The Borrower has acquired, with the assistance of a Five Million Dollar (\$5,000,000) Bridge Loan from Lender (the "City Bridge Loan"), that certain real property located at **460 Persian Drive** in Sunnyvale, California as more particularly described in Exhibit A attached hereto (the "Property"), for the purpose of developing thereon an affordable rental housing project for Extremely Low, Very Low, and Low-Income households, as such income levels are defined in the Regulatory Agreement (collectively "Lower-Income Households").

B. The Project consists of the construction of an apartment building with sixty-five (65) apartment units for Lower-Income Households, at least three (3) of which shall be reserved for Tenants with Special Needs, as defined in the Regulatory Agreement, and one (1) unrestricted Manager's Unit, with associated on- and off-site improvements and amenities in accordance with the plans submitted by Borrower as Planning Application 2015-7772 and approved by the City on January 25, 2016 (the "Project").

C. As a condition of this Loan, the Borrower has agreed to execute and record a regulatory agreement (the "Regulatory Agreement") upon the conversion of the City Bridge Loan to a Permanent Loan, which is the subject of this Loan Agreement. The Regulatory Agreement will regulate the Property for the Term of the Loan as defined herein to ensure that the Units are occupied by and affordable to Lower-Income Households as described above.

D. The Lender will oversee the Project to ensure that it conforms to the scope of work, project budget, project timeline, and that it meets all Lender and state housing and building codes.

NOW THEREFORE, in consideration of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and Lender hereby agree as follows:

**ARTICLE 1**  
**LOAN TERMS**

1.1 Loan Agreement. The Lender agrees to loan and Borrower agrees to borrow an amount not to exceed Seven Million Four Hundred Thirty Thousand Dollars (\$7,430,000) of Sunnyvale Housing Mitigation Funds (the "Loan"), subject to the conditions and terms of this Agreement. The Loan shall be evidenced by a Promissory Note executed by Borrower that bears three percent (3%) interest, fully deferred, with a Term defined in Section 1.3 hereof (the "Note"), with residual receipts payable as provided in the Note, and secured by a deed of trust (the "Deed of Trust") and Regulatory Agreement recorded against the Property. This Agreement, the Note, the Deed of Trust and the Regulatory Agreement shall be collectively referred to as the "Loan Documents".

1.2 Conditions of Funding. The obligation of the Lender to disburse Loan proceeds under this Agreement is subject to the following conditions:

(a) There exists no Default nor any act, failure, omission or condition that would constitute a default under this Agreement or under the Bridge Loan Documents;

(b) The Borrower holds title to the Property at the time of disbursement of the Loan funds;

(c) A title insurer reasonable acceptable to the Lender is unconditionally and irrevocably committed to issuing an LP-1 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Lender, and containing such endorsements as the Lender may reasonably require.

(d) Escrow instructions ("Escrow Instructions") prepared by the parties shall be delivered to and accepted by the title company. The Escrow Instructions shall be consistent with the terms of this Agreement and shall provide, among other matters, that prior to the Closing Date (as defined below):

(1) This Agreement shall be executed by the Borrower and the Lender and delivered to the Lender;

(2) The Note shall be executed by Borrower and delivered to the Lender;

(3) The Deed of Trust shall be executed by Borrower and recorded in the records of the County of Santa Clara (the "County");

(4) The Regulatory Agreement shall be executed by Borrower and the Lender and recorded in the records of the County;

(e) Any approval of this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement contemplated by this Agreement that is required under the Loan Documents shall be delivered to the Lender, and any certification required by the Lender

with respect to the procurement of any such approval shall be delivered by Borrower to the Lender.

(f) Borrower shall provide the Lender with a resolution approving and authorizing execution of this Agreement and all documents contemplated hereby and with such other documentation required by the Lender regarding Borrower's status and authority to enter into this transaction.

(g) Borrower shall provide the Lender with certificates of insurance, in form and with insurers admitted in California and acceptable to the Lender, evidencing compliance with the City's insurance requirements, as provided by the Lender on or prior to the Closing Date, and upon demand by Lender at any time subsequent. If requested by the Lender, Borrower shall also provide complete copies of the required insurance policies and bonds.

(h) The closing contemplated by this Section and the Escrow Instructions shall occur within thirty (30) days of the date of execution of this Agreement, unless the parties agree to a different closing date (the "Closing Date").

(i) The Lender has determined that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Borrower has obtained in connection with the Project, are not less than the amount that is necessary to pay for the Project and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement.

(j) The Lender has received a written draw request from the Borrower, including certification by the Borrower that the condition set forth in Section 1.4(a) is satisfied, requesting disbursement of the Loan funds in order to pay off the outstanding Principal under the City Bridge Loan as set forth in the Project Budget, included herein as **Exhibit B**. This draw request shall specify the amount of funds needed and a copy of the most recent loan statement(s) for any other loans encumbering the Property at that time. The Borrower shall apply all disbursements for the purpose requested.

(k) Borrower shall provide Lender with evidence consisting of written, enforceable loan commitments, that all other funds needed to develop the Project ("Matching Funds") have been secured. Matching Funds secured by Borrower to date, not including the City loans, amount to approximately Thirty-Six Million Three Hundred Thousand Dollars (\$36,300,000), as shown in Exhibit B, Project Budget. Borrower shall be responsible for securing all Matching Funds needed to pay for Project development costs, consistent with the Project Budget and Project Description and Timeline, attached as Exhibits B and C to this Agreement.

1.3 Term of Agreement. The term of this Agreement (the "Term") shall commence upon execution of this Agreement and shall end the earlier of Fifty-Five (55) Years from the date on which the Project receives a Final Occupancy Certificate ("Occupancy") or December 31, 2075. All payments on the Loan shall become due and payable in full as set forth in the Note and no later than the end of the Loan Term.

#### 1.4 Use of Funds.

- (a) The Borrower shall use the Loan Funds only to repay the City Bridge Loan and other Project costs (the “Permitted Use”) as described in the Project Budget, attached hereto as Exhibit B.
- (b) The Borrower agrees to be liable for repayment of any disbursed Loan proceeds not utilized for the Permitted Use.

1.5 Regulatory Agreement. In connection herewith, the Borrower shall execute and record a Regulatory Agreement which shall regulate all Units of the Property to ensure that the units are occupied by and affordable to Lower-Income Households for not less than fifty-five (55) years from the date of Occupancy.

1.6 Subordination. The Loan Documents may be subordinated to the deed(s) of trust securing the construction and/or permanent private bank loan(s) in the approximate amounts set forth in the Project Budget (each, a “Senior Loan”), subject to the following conditions, but shall not be subordinated to any public entity (soft debt) loan:

(a) Borrower must demonstrate to the Lender's reasonable satisfaction that subordination of each Senior Loan deed of trust is necessary to secure adequate financing for the Project, including the operation of the Property as affordable rental housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the Lender, in addition to any other information reasonably required by the Lender, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate financing to ensure the viability of the Project, including any Project costs not included in the Budget, attached hereto as Exhibit B, and adequate financing for the Project would not be available without the proposed subordination.

(b) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the holder of the Senior Loan. To satisfy this requirement, the subordination agreement(s) must provide the Lender with adequate rights to cure any defaults by Borrower, including: (i) providing the Lender or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the Lender with a satisfactory cure period to cure any default.

(c) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the Lender.

(d) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise any remedies by the Lender under the Loan Documents but such subordination may require a notice period to Senior Loan holder before such exercise of remedies.

(e) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

## ARTICLE 2 GENERAL REQUIREMENTS

2.1 Rental Agreement. Leases of Units must comply with the following requirements and any additional requirements set forth in the Regulatory Agreement:

- (a) Tenant leases must be for not less than one year unless by mutual agreement between tenant and owner.
- (b) Any termination of tenancy or refusal to renew a lease, with the exception of evictions or non-renewals for non-payment of rent, must be preceded by at least thirty (30) days written notice specifying the grounds for the action by the owner.
- (c) Leases shall be in writing and may not contain the following prohibitive clauses:
  - (1) Agreement by the tenant to be sued.
  - (2) Statement that owner can confiscate tenant property.
  - (3) Statement excusing owner from legal responsibility.
  - (4) Statement that owner does not have to give notice when instituting a lawsuit.
  - (5) Agreement by the tenant to waive rights to a jury trial.
  - (6) Agreement by the tenant to waive rights to appeal a court decision.
  - (7) Agreement by the tenant to pay attorneys' fees if the tenant wins a court case.
  - (8) Agreement by the tenant to waive rights to civil court proceeding to defend eviction.

2.2 Property Management. During the term of this Agreement, Borrower shall maintain the Property in good repair and in a neat, clean and orderly condition and shall comply with all of the terms and provisions of the City permits issued for the Project. The Borrower must keep and maintain the Property in compliance with all applicable laws and Lender requirements as set forth in the Loan Documents for the duration of this Agreement, and shall not cause or allow the Property to be in violation of any federal, state or local laws, ordinances or regulations.

2.3 Occupancy Procedures. The Borrower shall submit, within 90 days of execution of this Agreement, a written Tenant Selection Plan for review and approval by Lender and any

subordinate lenders that contains policies and criteria for selecting Tenants of the Units that, at a minimum, and as further described in the Regulatory Agreement:

- (a) Are consistent with the purpose of providing housing for Lower-Income Households, with priority given, to the extent permitted by federal and state law and to the extent possible without conflicting with Section 4.2 herein or with any other Project funding sources (with respect to Units in the Project assisted with an operating subsidy from other funding sources), to those who live and/or work in Sunnyvale at time of application to reside in the Project (“Sunnyvale Applicants”);
- (b) Are reasonably related to the eligibility criteria applicable to each category of Units in the Project, and the applicants’ ability to perform the obligations of the lease; and
- (c) Provide for:
  - (i) The selection of tenants from a written waiting list generated by a lottery process, for initial occupancy, and thereafter to be added to as needed to fill vacancies in the chronological order in which applications are received and deemed eligible application, insofar as is practicable; and
  - (ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

2.4 Security Deposits. Any security deposits collected by the Borrower or Borrower’s agent shall be kept separate and apart from all other funds of the Property in a trust account with depository insured by the Federal Deposit Insurance Corporation, or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such amount shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

2.5 Hazard and Liability Insurance. The Borrower shall at all times cause the Property to be insured against loss by fire, flood, if in a flood zone, and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the Lender. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the Lender. Property insurance policies shall name the Lender as an additional insured, as approved by the Lender. The foregoing shall not limit the obligations of Borrower pursuant to the Deed of Trust.

2.6 Indemnity and Hold Harmless. The Borrower and its successors in interest agree to indemnify, defend, and hold harmless the Lender and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney’s fees) arising from or in connection with the Borrower’s construction, management, maintenance or operation of the Project; provided, however, the Borrower’s obligations to indemnify and hold harmless shall not apply in the event of the Lender’s gross negligence or willful

misconduct. The Borrower agrees to provide all costs of any necessary legal defense and all attorneys' fees incurred in defending any claim, whether or not actually filed in any court

2.7 Annual Report. The Borrower shall file with the Lender an annual report, no later than 120 days following the end of each calendar year. The report shall contain a certification by the Borrower as to such information as the Lender may then require including, but not limited to, the following:

- (a) The substantial physical defects in the Property, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Borrower has taken in order to maintain the Property in a safe and sanitary condition in accordance with applicable housing and building codes.
- (b) The occupancy of the Property including:
  - (1) the verified income of each current household; and
  - (2) the current rent charged each household and whether these rents include utilities.
- (c) A summary of the information received from the recertification of tenants' incomes.
- (d) Other information reasonably required by the Lender, including the fiscal condition of the Borrower showing a financial statement for the previous fiscal year that includes a balance sheet and a profit and loss statement indicating any surplus or deficit in operating accounts; a detailed, itemized listing of income and expenses; the amount of any fiscal reserves and the total amount of Residual Receipts received. Such financial statement shall be prepared in accordance with the requirements of the Lender. The Lender may require that the financial statement be audited at the Borrower's expense by an independent certified public accountant acceptable to the Lender or other person designated by the Lender.

2.8 Lender Review and Inspections.

- (a) Upon not less than 2 business days' notice to the Borrower, the Lender may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the Lender, the Borrower shall notify occupants of upcoming inspections of their units in accordance with state law.
- (b) The Lender may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.

- (c) Borrower shall preserve and make available its records related to receipt and use of Loan proceeds until the expiration of five years from the date of the final disbursement of Loan proceeds, or for such longer period, if any, as is required by law. Borrower shall preserve and make available its records related to occupancy and rent requirements until the expiration of five years from the end of the calendar year to which such records pertain, or for such longer period, if any, as is required by law. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

## 2.9 Restrictions on Sale, Encumbrance, and Other Acts.

- (a) The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or of any its interest therein (a "Transfer"), except as otherwise permitted herein or except with the prior written approval of the Lender.
- (b) Notwithstanding the foregoing, Borrower may Transfer to a wholly-controlled affiliate of MidPen Housing Corporation ("MidPen"). In such an event, Lender approval rights shall be limited to adjusting terms of the Loan and transferee's willingness to assume all obligations.
- (c) The unpaid principal balance of the Loan together with any unpaid interest due thereon shall be due and payable in full upon: 1) a refinancing, sale, transfer or other disposition of the Property or any portion thereof, unless such disposition of the Property has been first approved in writing by the Lender, as evidenced by the signature of the City Manager, and approved as to form by the Lender's Attorney; or 2) the declaration by the Lender of a default as described and subject to the cure periods in Article 3 below.
- (d) The Borrower shall not permit the use of the Property for any purpose other than that permitted by this Agreement without the prior written approval of the Lender.
- (e) Notwithstanding anything to the contrary contained herein, the following Transfers shall be permitted under this Agreement, the Note, Deed of Trust and Regulatory Agreement: (1) encumbrance of the Property by all lenders identified on Exhibit B; (2) transfers of the Borrower's limited partner interests; (3) removal and replacement of Borrower's general partner pursuant to the Borrower's partnership agreement; and (4) the granting and exercise of a right of first refusal and/or purchase option from Borrower to MidPen or a wholly-controlled affiliate of MidPen.



- (e) The Lender may approve a Transfer provided that all of the following conditions are met:
- (1) the Borrower is in compliance with the Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Regulatory Agreement;
  - (2) the transferee agrees to assume all obligations of the Borrower pursuant to the Regulatory Agreement; and
  - (3) any transferee demonstrates to the Lender's satisfaction that it has the management and financial capacity to own and operate the Property.

2.10 Assignment of Lender Rights. The Lender retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the Lender may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

2.11 Environmentally Impaired. In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Lender's or the trustee's rights and remedies under the Deed of Trust, the Lender may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Lender's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the Lender in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Lender upon its demand made at any time following the conclusion of such action.

**ARTICLE 3**  
**DEFAULTS AND REMEDIES**

3.1 Event of Default.

Each of the following shall constitute a “Default” and “Event of Default” by Borrower under this Agreement:

(a) Failure to Complete Project. Failure of Borrower to complete the Project by the date provided in Exhibit C “Project Description and Timeline”, subject to the cure periods provided in subsection (c) below and further subject to force majeure.

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the Lender that such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Lender to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 3, the specific provisions shall control.

- i. Notice to Borrower and Borrower’s limited partner shall be at the addresses specified herein. Notwithstanding anything to the contrary contained herein, or in any of the Loan Documents, the limited partner of Borrower shall have the right, but not the obligation, to cure the defaults of the Borrower.

(d) Default Under Other Loans. Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the documents evidencing and securing the other loans to Borrower in connection with the Project, if any, following expiration of all applicable notice and cure periods and the declaration of such default by the holder of such loan.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to

accelerate automatically, without the need for any action by the Lender, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by Lender, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower shall have voluntarily suspended its business.

(h) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property.

(i) Unauthorized Transfer. Any transfer other than as permitted by Section 2.9.

(j) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Lender in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made and that Borrower was aware that the representation or warranty was incorrect when made.

### 3.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Lender or automatically where so specified, relieve the Lender of any obligation to make or continue the Loan and shall give the Lender the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The Lender shall have the right to cause all indebtedness of the Borrower to the Lender under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The Lender may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Lender as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Lender Deed of Trust. The Borrower shall be liable to pay the Lender on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Lender in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The Lender shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations

and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The Lender shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Lender for any funds advanced by the Lender to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

### 3.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Lender or the rights of the Lender hereunder.

3.4 Remedies Cumulative. No right, power, or remedy given to the Lender by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Lender by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Lender to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy. Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty days (30) after notice thereof given by the Lender or, where cure is not possible within thirty (30) days, whose cure is not commenced within thirty days and diligently prosecuted to completion shall constitute an Event of Default.

3.5 Lender's Remedies. Upon the happening of an Event of Default, the Lender may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement and the Regulatory Agreement.

## ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1 Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of the Lender has or may obtain a personal or financial interest in or benefit from the Borrower or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project or the Property itself, either for themselves or for those with whom they have family or business ties, during their tenure with Lender or one year thereafter.

4.2 Nondiscrimination. All of the units (excluding the manager unit) shall be available for occupancy on a continuous basis to members of the general public who are eligible households

and income eligible. The Borrower shall not give preference to any particular class or group of persons in renting the units, or any part of the Property, except to the extent that the units are required to be leased to Lower-Income and/or Special Needs Households, as further described in the Regulatory Agreement and Tenant Selection Plan. The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

- (a) The Borrower hereby agrees to, and shall, hold Lender, its elective and appointive boards, council members, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Borrower's operations under this Agreement, whether such operations be by the Borrower or subcontractor, or by any one of more persons directly or indirectly employed by, or acting as agent for, the Borrower or any subcontractor provided, however, the Borrower's obligations to hold harmless shall not apply in the event of the Lender's gross negligence or willful misconduct. The Borrower agrees to, and shall, hold the Lender, its elective and appointive boards, council members, officers, agents and employees harmless from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations.
- (b) The Borrower agrees to provide all costs of any necessary legal defense and all attorneys' fees incurred in defending any claim, whether or not actually filed in any court.

4.3 Amendment. This Agreement may be amended only by a written instrument signed by authorized representatives of the Lender and the Borrower. The City Manager or his/her designee shall be authorized to act on behalf of the Lender.

4.4 Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

Lender: City of Sunnyvale  
Housing Officer  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

With a copy to: City of Sunnyvale  
City Attorney  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

Borrower: MP Edwina Benner Associates, L.P. a California limited partnership  
c/o MP 460 Persian LLC, a California limited liability company  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404  
Attn: Matthew O. Franklin

With a copy to Trustor's investor limited partner:

Bank of America, N.A.  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110  
Attn: Asset Management

4.5 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

4.6 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

4.7 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

4.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

4.9 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

4.11 No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

4.12 No Pledging of Lender's Credit. Under no circumstances shall the Borrower have the authority or power to pledge the credit of Lender or incur any obligation in the name of Lender. Borrower shall save and hold harmless Lender, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

4.13 Venue. In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara,

or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

IN WITNESS WHEREOF, the Lender and the Borrower have executed this Agreement as of the date first set forth above.

**BORROWER:**

MP EDWINA BENNER ASSOCIATES, L.P., a California Limited Partnership

By: MP 460 Persian LLC, a California limited liability company  
Its: General Partner

By: Mid-Peninsula Baker Park, Inc., a California nonprofit public benefit corporation  
Its: Sole Member/Manager

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By: Matthew O. Franklin  
Its: Assistant Secretary

**LENDER:**

City of Sunnyvale, a municipal corporation

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By: Deanna Santana  
Its: City Manager

APPROVED AS TO FORM:

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By: Robert Boco  
Its: Senior Assistant City Attorney

*“A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.”*

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

*“A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.”*

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**EXHIBIT A**

**Legal Description**

**460 Persian Drive, Sunnyvale, CA**

The land referred to is situated in the city of Sunnyvale, county of Santa Clara, State of California, and is described as follows:

**PARCEL ONE:**

Parcel E as shown on that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 4, 1970 in [Book 268 of Maps, Page 51](#).

EXCEPTING THEREFROM, the following:

A portion of Parcel E, as shown on that certain Parcel Map recorded June 4, 1970 in Book 268, Page 51 of Maps, Records of Santa Clara County, California and being more particularly described as follows: Commencing at the Northeasterly corner of said Parcel E, said corner also being on the Southerly line of Persian Drive as shown on the above mentioned Parcel Maps; thence South 14° 50' 15" West along the Easterly line of said Parcel E, 8.90 feet to a point; thence South 78° 57' 41" West, 89.94 feet to a point on the Southerly line of said Persian Drive; and thence along said Southerly line of Persian Drive 94.17 feet to the point of commencement.

**PARCEL TWO:**

An easement for emergency vehicle access as set forth in that certain "Reciprocal Easement Agreement (Emergency Vehicle Access)" recorded April 6, 2015, Instrument No. 22906239, of Official Records.

APN: 110-29-028

ARB: 110-14-118.01

**EXHIBIT B****Project Budget**  
*Sources and Uses*

<b>USES</b>		
<b>Category</b>	<b>Line Items</b>	<b>Subtotal</b>
<b>ACQUISITION</b>		<b>\$ 8,412,829</b>
Property Acquisition	\$ 7,561,145	
Holding Costs (Insurance, Property Management, Security, Bridge Loan Interest, Tenant Relocation)	\$ 766,073	
Soft Costs (Legal, Title, etc.)	\$ 85,611	
<b>CONSTRUCTION</b>		<b>\$ 33,192,896</b>
<b>Hard Costs</b>		<b>\$ 27,764,321</b>
Site prep (grading, soil remediation, utilities, etc.)	\$ 193,864	
Structure (foundation, parking, dwelling units)	\$ 20,923,348	
On-site improvements (landscaping, fencing, etc.)	\$ 1,132,560	
Off-site improvements (sidewalks, etc.)	\$ 28,659	
Solar Energy System	\$ 448,000	
General Contractor Overhead (~9%)	\$ 2,371,097	
Contingency (10%)	\$ 2,666,793	
<b>Construction Soft Costs</b>		<b>\$ 5,428,575</b>
Design/Engineering	\$ 1,883,400	
Construction Management	\$ 202,675	
Permits	\$ 312,000	
Legal & Escrow Fees	\$ 180,500	
Construction loan interest	\$ 2,000,000	
City utility connection fees (water, sewer, etc.)	\$ 850,000	
<b>OTHER SOFT COSTS</b>		<b>\$ 2,682,385</b>
Insurance, audit, appraisal, other misc. soft costs	\$ 410,020	
Developer Fee	\$ 1,400,000	
Reserves	\$ 405,365	
Marketing, Lease-up expenses	\$ 150,000	
Soft Cost Contingency	\$ 317,000	
<b>TOTAL USES</b>	<b>\$ 44,288,110</b>	
<b>SOURCES</b>		
City of Sunnyvale Housing Mitigation Loan (Perm)	\$ 7,430,000	
Investor Equity	\$ 23,288,710	
B of A / Investor Loan (Perm*)	\$ 10,419,400	
Housing Trust Loan	\$ 200,000	
County of Santa Clara Loan	\$ 2,350,000	
City of Sunnyvale HOME Loan	\$ 600,000	
<b>TOTAL SOURCES</b>	<b>\$ 44,288,110</b>	
<p><i>Any change to this budget that would modify one or more of the Uses categories by 10% or more shall require prior written approval of the Community Development Director or his/her designee. *Construction loan amount is currently \$30,578,000.</i></p>		

**EXHIBIT C****Project Description and Timeline**

Construct a sixty-six unit (66) affordable housing project at 460 Persian Drive in Sunnyvale, CA as further described in this Agreement and in the plans and conditions of approval of Planning Application 2015-7772 granted by the City of Sunnyvale on January 25, 2016.

**Timeline:**

<b>Task</b>	<b>Target Date</b>
Close Construction & City Loans	March 30, 2017
Begin Construction	April 20, 2017
Submit Final Tenant Selection Plan to City	June 30, 2017
Begin Lease Up	May 1, 2018
Complete Construction	September 1, 2018
Complete Occupancy	February 1, 2019
Perm Conversion (Senior Lender)	June 1, 2019